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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,491	08/20/2003	Douglas J. Hidding	BMO-129	7409
61215	7590	01/22/2009		
DAVID I. ROCHE BAKER & MCKENZIE LLP 130 EAST RANDOLPH DRIVE CHICAGO, IL 60601			EXAMINER HYLTON, ROBIN ANNETTE	
			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			01/22/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/644,491

**Applicant(s)**

HIDDING, DOUGLAS J.

**Examiner**

ROBIN HYLTON

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 8-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 15-18 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 June 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CC)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings were received on June 11, 2008. These drawings are not approved. The drawings fail to completely illustrate the claimed invention (see below) and also introduce new matter. The extraneous lines extending from the top wall and portions of the protrusion in the figures are not seen in the drawings of US Patent 5,904,259 incorporated by reference in the instant application.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sleeve "partially shrunk into engagement with a portion of the closure" must be shown or the feature(s) canceled from the claim (22). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The "closed" end of the closure has an opening. Therefore, it is not closed.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1,2,7,15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salemi (US 5,524,782) in view of Holoubek et al. (US 3,142,580).

Salemi teaches a container **46** having a transfer ring **52** disposed below at least one cap engaging protrusion **48**, a bottle cap **50** having a circular cover and a depending skirt, and a shrink sleeve **58**. Salemi does not teach the sleeve has coloring thereon.

Holoubek teaches it is known to provide a container assembly with a shrink sleeve having coloring (col. 6, lines 17-18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of coloring on the shrink sleeve of Salemi. Doing so provides additional information to the end user regarding the product contained in the container and/or tamper-evidence.

Regarding the blow-molding limitations of the container neck in claims 2 and 16, these are product-by-process claims and do not structurally limit the claimed invention.

Regarding the HDPE material of the container, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container of HDPE, since it has been held to be within the general skill of a worker in the art to select a known material on

the basis of its suitability for the intended use as a matter of obvious design choice. Doing so provides a container of a material suitable for having a shrink sleeve applied to a cap covering the container opening.

6. Claims 3-6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 15 above, and further in view of Irish, Jr. (US 3,720,343).

Salemi as modified teaches the claimed closure arrangement except for sleeve engaging formations on the transfer ring of the container neck.

Irish teaches it is known to provide a container neck transfer ring with indentations thereon.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of sleeve engaging formations in the form of indentations on the transfer ring of the container neck of Salemi. Doing so allows for better gripping between the container neck and the shrink sleeve as well as for better gripping of the container neck by the user's hand upon removal of the shrink sleeve.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 15 above, and further in view of Crum (US 5,022,526).

Salemi teaches the claimed closure arrangement except for a label, the label and sleeve covering substantially the exterior of the closure.

Crum teaches it is known to provide a label covering substantially the exterior of the cap at the top wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of a label to the closure arrangement of Salemi. Doing so provides instructions for the user regarding the use of the product contents in the container.

8. Claims 1,2,7,15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinhart (US 4,225,050)) in view of Sayre (US 5,654,022).

Reinhart teaches a container neck **11** having a transfer ring disposed below at least one cap engaging protrusion **12**, a bottle cap **10** having a circular cover and a depending skirt.

Reinhart does not teach a shrink sleeve having coloring thereon.

Sayre teaches it is known to provide a container assembly with a shrink sleeve having coloring (col. 5, line 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of printing on the shrink sleeve of Reinhart. Doing so provides additional information to the end user regarding the product contained in the container and/or tamper-evidence.

Regarding the blow-molding limitations of the container neck in claims 2 and 16, these are product-by-process claims and do not structurally limit the claimed invention.

Regarding the HDPE material of the container, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container of HDPE, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so provides a container of a material suitable for having a shrink sleeve applied to a cap covering the container opening.

9. Claims 3-6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 15 above, and further in view of Irish, Jr. (US 3,720,343).

Reinhart as modified teaches the claimed closure arrangement except for sleeve engaging formations on the transfer ring of the container neck.

Irish teaches it is known to provide a container neck transfer ring with indentations thereon.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of sleeve engaging formations in the form of indentations on the transfer ring of the container neck of Reinhart. Doing so allows for better gripping between the container neck and the shrink sleeve as well as for better gripping of the container neck by the user's hand upon removal of the shrink sleeve.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 15 above, and further in view of Crum (US 5,022,526).

Reinhart teaches the claimed closure arrangement except for a label, the label and sleeve covering substantially the exterior of the closure.

Crum teaches it is known to provide a label covering substantially the exterior of the cap at the top wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of a label to the closure arrangement of Reinhart. Doing so provides instructions for the user regarding the use of the product contents in the container.

11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al. (US 5,295,519) in view of Scheidegger (FR 2,739,611).

Baker discloses a closure **50** comprising a closed end **53** and a skirt **55** extending away from said closed end defining an open end, said closure having has an area of enlarged diameter forming a protrusion on the exterior of said closure.

Baker does not disclose a shrink sleeve carried by said closure, said shrink sleeve being partially shrunk into engagement with a portion of said closure such that said shrink sleeve and said skirt define a gap by which said skirt is at least partially spaced inwardly from said sleeve, whereby said skirt may expand upon installation of said closure onto a bottle without rupturing said shrink sleeve, said shrink sleeve being only partially shrunk and engaging said protrusion whereby completion of shrinking of said shrink sleeve around said closure is adapted to be completed after said closure is applied to a container.

Scheidegger teaches it is known to provide a closure assembly comprising a closure having a closed end **2** and a skirt **6** extending away from said closed end defining an open end and a shrink sleeve carried by said closure, said shrink sleeve being partially shrunk into engagement with a portion of said closure such that said shrink sleeve and said skirt define a gap by which said skirt is at least partially spaced inwardly from said sleeve, whereby said skirt may expand upon installation of said closure onto a bottle without rupturing said shrink sleeve, said shrink sleeve being only partially shrunk and engaging said protrusion whereby completion of shrinking of said shrink sleeve around said closure is adapted to be completed after said closure is applied to a container (see Fig. 1 and the English language abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a shrink sleeve partially shrunk into engagement with a portion of the closure of Baker such that said shrink sleeve and said skirt define a gap by which said skirt is at least partially spaced inwardly from said sleeve, whereby said skirt may expand upon installation of said closure onto a bottle without rupturing said shrink sleeve, said shrink sleeve



being only partially shrunk and engaging said protrusion whereby completion of shrinking of said shrink sleeve around said closure is adapted to be completed after said closure is applied to a container. Doing so allows for quick closing and sealing of a filled container using a pre-assembled closure assembly requiring fewer closing steps and assembly-line locations.

### ***Response to Arguments***

12. Applicant's arguments filed June 11, 2008 have been fully considered but they are not persuasive. With respect to the drawing, it is noted applicant incorporated by referee the drawings of US Patent 5,904,259. However, the replacement drawings filed June 11, 2008 in the instant application set forth additional structure not set forth in the noted drawings.

13. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

14. In view of the new grounds of rejection, this Office action is made non-final.

15. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

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17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday, Tuesday, Thursday, and Friday from 8:00 a.m. to 2:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

January 20, 2009

/Robin A. Hylton/  
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GAU 3781